REVIEWS

Outlines of Criminal Law. By Courtney Stanhope Kenney, LL.D., Reader in English Law, University of Cambridge. Revised and Adapted for American Scholars by James H. Webb, Instructor in Criminal Law and Procedure in the Law Department of Yale University. N. Y. The MacMillan Co., 1907.

Until the publication of this volume, there has been no short work on Criminal Law especially adapted to the use of American law students. Dr. Kenney's book, published in 1902, was based upon lectures given by him for more than twenty years at Cambridge. It stated, in a fresh and interesting way, so much of English criminal law as an English university student or an English country magistrate needs to know, in order to acquaint himself with its fundamental principles and rules, not forgetting to emphasize such as are of universal application. Like all English law books, it was saturated with statute law. Mr. Webb has weeded out a good deal of this, introduced not a little from purely American sources, and recast the work into a homogeneous whole, not showing upon its face how much is from his pen and how much from that of Dr. Kenney. The latter observes of Stephen's edition of Blackstone (p. 4) that it was one in which the Commentaries were reconstructed rather than edited. A not dissimilar service has been performed, and well performed for him by Mr. Webb.

The English common law of crime was the parent of ours, but we have somewhat expanded it in applying it to the conditions of a new country, provided in the beginning with but meager statute-books. Thus Dr. Kenney's remark (pp. 6, 23) that until made such by Act of Parliament, it was no crime in England to kill a horse or cow, represents a stage of social development which Americans passed very early in their judicial history.

The peculiar value of the original work was its clear setting forth of the subject is a scholarly and philosophic way. This feature has been fully preserved in Mr. Webb's recension. It is an intelligible book to the general reader, who has had no professional education in law.

Dr. Kenney is no sentimentalist in his theory of punishments. He vindicates them mainly as deterrent, although showing some sympathy (p. 30) with Cousin's epigram that punishment is not just because it deters, but deters because it is felt to be just.

One gets occasionally an illuminating glimpse of the greater directness and stronger movement of the English criminal trial, as compared with ours. The Judge takes a hand in the case, from the start to the finish, in a way that our Constitutions or usages render rare. Thus a trial is cited as occurring in 1901, when Mr. Justice Bigham "advised" the jury to acquit a women of murder, who had deliberately drowned two of her children, though she had never showed any other symptom of a disordered

mind, and had declared that she thought "it was the best thing she could do for them." (p. 51).

The chapters on evidence are of particular merit. Our very artificial rules and the reasons for them are both clearly explained.

Dr. Kenney accepts as a maxim *Omnia presumuntur rite et solenniter esse acta*, without the customary prefix of *Ex diuturnitate temporis* (p. 319). It may be doubted if in this abbreviated form it can be considered as established in American courts.

It has evidently been the aim of Mr. Webb to make no changes in the text not necessary to prevent misconceptions by an American reader. This rule was, no doubt, the right one, but occasionally may have been pushed too far. Thus, he has retained without qualification (p. 360) the statement (supported by ample English authority) that a witness, who is not a party, cannot be compelled to produce his title-deeds for inspection. There are, to say the least, strong reasons for the position that this immunity is bound up with the peculiar English system of real estate conveyancing, and would not be respected in a country where all land titles are normally matters of public record.

The proof reading has been in general well done, though we notice (pp. xvii, 306) the leading case of United States v. Arjona given as United States v. Arizona. *S. E. B.*

Aperçu de l'Evolution Juridique du Mariage. II. Espagne. By Émile Stocquart. Brussels, Oscar Lamberty, 1907. pp. 283. 3½ francs.

The first part of this work was reviewed in the Yale Law Journal in 1905 (Vol. XIV, 357). The author now takes up the course of the law of marriage in Spain. Its original Roman foundation is first set out, with considerable detail;—monogamy but side by side with it, concubinage, both equally legitimate forms of union. The father of the concubine, or he who had the *patria potestas* over her, must give his consent to the latter contract, and by the same right could terminate it at will (pp. 39, 65). Christianity, under Constantine, withdrew the sanction of the law for concubinage (p. 73).

The invasion of the Goths made, Dr. Stocquart maintains, less of economic and social changes than has often been thought, because the lands which they seized belonged to but a few proprietors. Spain was than held by a handful of grandees, each with a little army of slaves. One of them fed four thousand persons through the Winter on the products of his estate. The Barbarians took from most of these land holders two-thirds of their possessions; but this still left them rich (p. 99). In the fifth century the term *nobles* meant the rich rather than the well-born, and they were found largely in the cities, where the principles of civil liberty were for long better enforced than in the rest of Europe.

German institutions had little influence in Spain. The name *German* is the Latin rendering of *Herman*, that is war-man (p. 108), and it was only in that character that the Roman people